

## **REMARKS**

On consideration of the office action of June 1, 2006, which was a non-final rejection, the applicant concluded that his application with claims directed to the method of removing microorganisms would receive more favorable treatment than by presenting further arguments with respect to the composition claims.

It was thought that this could be done by filing an RCE and an appropriate amendment.

The Examiner in a telephone discussion and in an office letter dated 11/17/2006 advised the undersigned that in the case of changing from elected claims to non-elected claims, this was not the correct procedure.

At the time of the office action of June 1, 2006, there were pending in the application claims 2-9 (composition claims) and 12-15 (method claims) so that there is basis for filing a divisional application directed to the method claims.

The applicant has in accordance with the above amendment cancelled claims 1-11, cancelled claim 15 to moot its rejection on 35 U.S.C. 102(b) and added new claims 16-22 directed to preferred features of carrying out the method.

The method claims teach forming the argon-chlorine gas mixture directly before use with the concentration indicated and introducing the resulting dispersion into the room or site to be treated and after a time allowing for the desired effect on the microorganisms to take place, ventilating the room or site.

The art cited by the Examiner against the claims does not disclose or suggest the claimed method.

The Meyer gas mixture is a cleaning gas, more particularly a sparging gas for molten aluminum metal. The gas is fed into the molten aluminum so as to permeate the same and to collect impurities in the form of dross at the top of the trough. The gas is described at column 4, line 43 et seq. as being an argon – chlorine mixture in the ratio of about 95 to 5%.

There is no teaching or suggestion in Meyer of the use of the gas mixture prepared just prior to use, with the concentration as recited of argon to chlorine of 20:1 or chlorine 1 – 3%, in the mixture. There is clearly no suggestion to apply the gas mixture as taught by the applicant in to remove microorganisms.

It is the applicant's position that the claimed method is not anticipated and would further not be obvious, notwithstanding that the compositions involved are related by composition or structure to a known composition as the compositions have to be compared as wholes, inclusive of their properties. The Meyer compositions cannot be regarded as useful for the sole use disclosed herein, the broad spectrum effectiveness against bacteria, viruses, mold, fungi, algae, spore forming microorganisms, termites, etc. as the sole use disclosed by Meyer is as a sparging gas for molten aluminum and would not provide the artisan with the necessary impetus to make the claimed compositions. The Meyer compositions were not known to possess the same property as relied upon herein for patentability. Most important, the compositions differ in that the instantly claimed compositions contain argon to chlorine in a ratio of 20:1 while the argon – chlorine mixtures of Meyer comprise 95 to 5% argon to chlorine. The Examiner recognizes the materiality make of the concentrations set forth in original claims 8 and 9 as theses claims were not rejected by the Examiner as being anticipated by Meyer. The limitation

of claim 8 (ratio of 20:1, argon:chlorine) is now included in new claim 15 which replaces cancelled claim 1 which did not include this limitation.

The Chemical Abstracts 117:95861 is also not relevant. The Examiner states that the Chemical Abstracts publication discloses argon – chlorine gas mixture wherein chlorine is present at 2%.

What the Chemical Abstract article discloses is in the “active oxidation of silicon carbide based ceramics in argon – 2% chlorine – oxygen gas mixtures at 1000 °C.” The O potential was controlled by “addns. of O<sub>2</sub> or H<sub>2</sub> at 1000°. Little attack was obsd. in the reducing environment composed of Ar-2% Cl<sub>2</sub>-1% H<sub>2</sub> or the oxidizing environment composed of Ar-2% Cl<sub>2</sub>-20% O<sub>2</sub>, but all of the materials were subject to active corrosion at intermediate O potentials.” The Chemical Abstracts article would appear to suggest only the combination of argon and chlorine together with either oxygen or hydrogen and particularly oxygen.

There is no suggestion in this publication (the full article does not appear to be available) of the suitability of argon – chlorine gas mixtures for even the limited purpose “active oxidation of silicon-based ceramics at 1000 °C”, let alone that such a gas mixture would have a high efficacy against bacteria, viruses, molds, spores, etc.

It is the applicant’s opinion that there is no teaching in this reference of the claimed compositions and more particularly of the claimed method and that the rejection thereon should therefore be withdrawn.

It is submitted that the divisional claims as now presented, claims 12-14, and 16-22 are patentable and notification to this effect is respectfully requested.

No additional fee should be required in view of the payment (acknowledged, see attached copy of postcard).

Respectfully Submitted



Evelyn M. Sommer

Registration No. 19, 603

Attorney for Applicant

250 Park Avenue, Suite 825

New York, NY 10177

Phone: 212-527-2657

Certificate of Mailing: I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the 30 day of Nov, 2006.

